

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

The Joint Application By BellSouth Corporation)	
For Authorization Under Section 271 of the)	WC DOCKET NO. 02 - 307
Communications Act to Provide In- Region,)	
InterLATA Service in the States of Florida and)	Filed: October 10, 2002
Tennessee)	

SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.'S OPPOSING COMMENTS FOR THE JOINT APPLICATION BY BELL SOUTH CORPORATION FOR AUTHORIZATION UNDER SECTION 271 OF THE COMMUNICATIONS ACT TO PROVIDE IN- REGION, INTERLATA SERVICE IN THE STATES OF FLORIDA AND TENNESSEE.

Supra Telecommunications and Information Systems, Inc. ("Supra Telecom"), pursuant to Public Notice, DA 02-2357, issued on September 20, 2002, hereby submits ***Opposing Comments*** ("Comments") to the Federal Communications Commission ("FCC") for consideration in WC Docket No. 02-307, in *The Joint Application By BellSouth Corporation For Authorization Under Section 271 of the Communications Act to Provide In- Region, InterLATA Service in the States of Florida and Tennessee* and in support thereof, states as follows:

BRIEF INTRODUCTION

As BellSouth has not met its obligations under Section 271 of the Telecommunications Act of 1996, the FCC should deny BellSouth's application for authorization to provide In-Region, InterLATA service in the States of Florida and Tennessee. Specifically, BellSouth continues to act in an anti-competitive manner aimed at maintaining its monopoly position. Allowing BellSouth to provide long-distance

service at this time will create disincentives for BellSouth's compliance with the Telecom Act.

FACTS

1. Supra Telecom is a competitive local exchange company incorporated, and lawfully doing business in Florida. Supra Telecom is certified by the Florida Public Service Commission ("FPSC") to provide local exchange service within Florida. Supra's principal place of business in Florida is 2620 S. W. 27th Avenue, Miami, Florida 33133.
2. Pleadings and process in this matter may be served upon:

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3. BellSouth Telecommunications, Inc., ("BellSouth"), is a local exchange company incorporated in Georgia, and lawfully doing business in the State of Florida as a Bell Operating Company. BellSouth's principal place of business in Florida is 150 W. Flagler Street, Suite 1910, Miami, Florida 33130.

4. Pursuant to the requirements of the Telecommunications Act of 1996, on May 19th, 1997, Supra Telecom accepted a standard resale agreement with BellSouth. (“First Resale Agreement”).
5. In June of 1997, Supra Telecom began offering local service in Florida to both residential and business subscribers. Although Supra Telecom has grown its customer base, this growth has been full of frustration, difficulties and problems. Therefore, Supra Telecom is sharing its experiences over the past five (5) years of operating as a competitor to BellSouth in Florida.
6. Pursuant to the requirements of the Telecommunications Act of 1996, on October 10, 1997, Supra Telecom accepted a standard Interconnection agreement with BellSouth¹, which Supra was led to believe by BellSouth was the AT&T-BellSouth Interconnection Agreement. (“First Resale Agreement”) The Interconnection Agreement was due to expire on or around October 10, 1999.
7. Pursuant to the requirements of the Telecommunications Act of 1996, on October 5, 1999, Supra Telecom adopted the AT&T Interconnection Agreement with BellSouth. (“Interconnection Agreement”) The Interconnection Agreement expired on or around June 9, 2000, however the parties continued to operate under an “evergreen” provision until the FPSC ordered the parties to execute a follow-on-agreement. Supra executed a follow-on agreement on August 16, 2002, and such was approved by the FPSC on August 22, 2002.

¹ The details surrounding the content of said Interconnection Agreement, and whether it was in fact, an adoption of the AT&T agreement of a standard offering has been the subject of several Dockets, including 981832-TP where the FPSC ordered the original agreement be replace the filed agreement, as well as Commercial Arbitration.

8. Significantly, on September 9, 2002, the same day that the FPSC gave BellSouth approval to provide long-distance service in Florida, BellSouth terminated Supra's access to LENS, BellSouth's least-discriminatory OSS. The effect of such is that Supra is unable to effectuate any changes to its existing customer base's service, and Supra is unable to provision service to any new customers. Thereafter, Supra sought an emergency preliminary injunction in the Northern District Court of Florida. The Northern District Court granted Supra's motion, pending the posting of a sufficient bond. See copy of Preliminary Injunction Order, attached hereto as **Supra Exhibit 1**. In order for the Court to have granted Supra's emergency motion, it concluded that Supra was likely to succeed on the merits of its underlying breach of contract action.
9. This is not the first time that BellSouth has wrongfully disconnected Supra's access to LENS. In May of 2000, BellSouth took the identical action, and was found by commercial arbitrators to have breached the parties' Interconnection Agreement for having done so, and awarded Supra damages as a result. Of course, now that Supra has a significant customer base, the present, willful breach of contract is all the more damaging, and evidences BellSouth's continuous bad faith intent towards Supra – BellSouth's biggest competitor in Florida.
10. Additionally, in implementing the parties' Interconnection Agreement, the parties have experienced several problems and difficulties in the process. These problems and difficulties cover an array of OSS and provisioning issues, UNEs, and other interconnection matters. These problems have been the subject of

numerous commercial arbitration proceedings, the awards resulting from which are hereby attached as exhibits in this filing.

11. Currently Supra Telecom serves over 350,000 access lines in the state of Florida, and based upon the FPSC's quarterly reports, Supra serves more access lines in Florida than any other CLEC operating in Florida. As such Supra's experience with BellSouth's CLEC OSS is significant, being based on the largest single group of access lines in Florida served by any competitive LEC.
12. In the FPSC's efforts to independently assess BellSouth Telecommunications, Inc.'s ("BellSouth") Operational Support Systems (OSS) for purposes of Section 271 consideration, the FPSC voted to initiate the Third Party Testing ("TPT") of BellSouth's CLEC OSS with KPMG as the test evaluator. At the inception of the TPT, it was never specified that the TPT would be conducted in lieu of CLECs' testimony of their actual commercial experiences in the administrative hearing where the FPSC will evaluate the checklist items in BellSouth's Section 271 Application. However, as the TPT evolved, the FPSC voted to deny the CLECs the opportunity to present testimonies that address the commercial performance of BellSouth's CLEC OSS in the administrative hearing in which the checklist items are evaluated. The FPSC practically excluded all CLECs' testimonies that relate to OSS and/or provisioning concerns in the administrative proceeding. Instead, these testimonies have been relegated to the TPT. This action suggests the FPSC's confusion between OSS the "UNE – i.e., the network" and OSS the "operational interface – i.e., the performance of the UNE" in its decision.

13. It is apparent that BellSouth successfully muddled these two outlooks of OSS so that the two views were “*confused*” to look almost as one and the same from a distance.

They are not.

The truth is that one is the “network element” itself while the other is the requisite “access” (features, functions and capabilities of the network element) that should be provided to CLECs in order to facilitate local competition. It is clear that the TPT, in seeking to evaluate the adequacy of the “network”, had to rely upon BellSouth provided definitions, policies and procedures without a due cause finding that BellSouth's policies and procedures in this matter are in any fashion or fact, lawful and in compliance with the Act.

14. Instead, TPT has been a test of network performance in an effort to “fine-tune” the “access” pieces to “desired” performance levels that will allow the CLECs comparable levels of performance. This is not what was envisioned by the Act.

From Code of Federal Regulations 47, Section 51.313:

Sec. 51.313 Just, reasonable and nondiscriminatory terms and conditions for the provision of unbundled network elements.

(a) The terms and conditions pursuant to which an incumbent LEC provides access to unbundled network elements shall be offered equally to all requesting telecommunications carriers.

(b) **Where applicable, the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself.** (c) An incumbent LEC must provide a carrier purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning,

maintenance and repair, and billing **functions** of the incumbent LEC's operations support systems. (Emphasis Added)
(C.F.R. 47, Sec 51.313)

The FCC's order implementing this law was clearly spelled out in *The First Report and Order on Local Competition* (CC Order 96-325 in Docket 96-98).

First on the general subject of parity in the provision of unbundled network elements:

312. We conclude that the obligation to provide "nondiscriminatory access to network elements on an unbundled basis"² refers to both the physical or logical connection to the element and the element itself. In considering how to implement this obligation in a manner that would achieve the 1996 Act's goal of promoting local exchange competition, we recognize that **new entrants, including small entities, would be denied a meaningful opportunity to compete if the quality of the access to unbundled elements provided by incumbent LECs, as well as the quality of the elements themselves, were lower than what the incumbent LECs provide to themselves.** Thus, we conclude it would be insufficient to define the obligation of incumbent LECs to provide "nondiscriminatory access" to mean that the quality of the access and unbundled elements incumbent LECs provide to all requesting carriers is the same. As discussed above with respect to interconnection,³ an incumbent LEC could potentially act in a nondiscriminatory manner in providing access or elements to all requesting carriers, while providing preferential access or elements to itself. Accordingly, we conclude that the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; **second, where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC**

² 96-325 footnote - 47 U.S.C. § 251(c)(3).

³ 96-325 footnote - See *supra*, Sections IV.G, IV.H.

provides to itself.⁴ (CC Order 96-325, para 312, Emphasis Added)

Then specifically in regard to the OSS unbundled network Element:

316. As is more fully discussed below,⁵ to enable new entrants, including small entities, to share the economies of scale, scope, and density within the incumbent LECs' networks, we conclude that incumbent LECs must provide carriers purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning,⁶ maintenance and repair, and billing functions of the incumbent LECs operations support systems. **Moreover, the incumbent must provide access to these functions under the same terms and conditions that they provide these services to themselves or their customers.** We discuss specific terms and conditions applicable to the unbundled elements identified in this order below, in Section V.J. (CC Order 96-325, para 316, Emphasis Added)

516. **We conclude that operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled** upon request under section 251(c)(3), as discussed below. Congress included in the definition of "network element" the terms "databases" and "information sufficient for billing and collection or used in the transmission, routing, *or other provision* of a telecommunications service."⁷ We believe that the inclusion of these terms in the definition of "network element" is a recognition that **the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry.** It is these systems that determine, in large part, the speed and efficiency with which incumbent LECs can market, order, provision, and maintain telecommunications services and facilities. Thus, we agree with Ameritech that "[o]perational interfaces are

⁴ **96-325 footnote** - We note that providing access or elements of lesser quality than that enjoyed by the incumbent LEC would also constitute an "unjust" or "unreasonable" term or condition.

⁵ **96-325 footnote** - See *infra*, Section V.J.

⁶ **96-325 footnote** - The term "provisioning" includes installation.

⁷ **96-325 footnote** - 47 U.S.C. § 153(29) (emphasis added).

essential to promote viable competitive entry."⁸ (CC Order 96-325, para 516, Emphasis Added)

518. Much of the information maintained by these systems is critical to the ability of other carriers to compete with incumbent LECs using unbundled network elements or resold services. Without access to review, *inter alia*, available telephone numbers, service interval information, and maintenance histories, competing carriers would operate at a significant disadvantage with respect to the incumbent. Other information, such as the facilities and services assigned to a particular customer, is necessary to a competing carrier's ability to provision and offer competing services to incumbent LEC customers.⁹ Finally, if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale **services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing.** Thus providing nondiscriminatory access to these support systems functions, which would include access to the information such systems contain, is vital to creating opportunities for meaningful competition. (CC Order 96-325, para 518, Emphasis Added)

The TPT may well have focused on the aspect of "the same time", but has completely ignored "in the same manner", and for that matter the precise technical definition of the UNE itself.

Further, Supra believes that the operational experience of one "VIP" LEC (i.e., KPMG), cannot suffice or replace the commercial experiences of approximately 400 CLECs who live or die by the real-world performance of BellSouth's CLEC OSS on a daily basis.

⁸ 96-325 footnote - Ameritech July 10 *Ex Parte* at 5.

In accepting this, the FPSC made BellSouth's CLEC OSS (“network”) the only UNE that BellSouth is allowed to provide to CLECs at a degraded level compared to all other UNEs it provides to its competitors that must be provided at parity with what BellSouth provides itself.

Supra believes that the FPSC erred when it denied the CLECs the opportunity to present testimonies with respect to CLECs’ actual commercial experience in the checklist tract of this proceeding. Supra believes that the integrity¹⁰ of BellSouth's CLEC OSS as a UNE (similar to other UNEs, i.e., local loop, transport, and switching) and the data that documents (i.e., the commercial experience of) CLECs’ “access” to BellSouth's CLEC OSS in the CLECs’ efforts to provide local telephony is information that was necessary and a part of the checklist¹¹. The truth is that KPMG only evaluated how the “network element” is pieced together, according to BellSouth's own definitions, and in doing so, KPMG tested for conformance to BellSouth's policy and procedures; which is completely different from evaluating BellSouth's CLEC OSS for commercial performance, vis-à-vis, CLECs’ real-life experiences. Further, the performance portion of BellSouth's CLEC OSS which documented CLECs’ commercial experience with specific focus on “access” to the “network element” as though it had been

⁹ **96-325 footnote** - For these reasons, it is most important that incumbent LECs, which currently own the overwhelming majority of local facilities in any market, provide this information to those new entrants who initially will rely to varying degrees on incumbent LEC facilities. *See e.g.*, AT&T comments at 33-34.

¹⁰ Supra notes that in Issues 5, 6, and 7 in Docket No. 960786A-TP (the administrative hearing track), the FPSC considers the integrity of UNEs pursuant to the Act. Supra contends that BellSouth's CLEC OSS is an UNE that happens to permeate almost all of BellSouth’s operations; therefore, as an UNE it should likewise be evaluated pursuant to the provisions of the Act.

¹¹ Section 271(c) (2)(B) in several places, calls for “nondiscriminatory access” to several checklist items.

completely “tuned to standard” by KPMG. It was therefore necessary that these two evaluations be carefully separated and accorded the weight they each deserved in order to ensure that the process of “fine-tuning” the network was not construed to suffice for the actual commercial experience of the CLECs. Indeed, the process of “fine-tuning” is *pseudo* real-world compared to the real-world data of the CLECs’ commercial experience (directly resulting from the "performance" they experience in their various transactions daily) brings to this proceeding.

Furthermore, it was obvious that there are problems in BellSouth's CLEC OSS, for example errors in PIC or LPIC carrier OCN, **even though the CLEC LSR was correct.** How many Florida Public Service Commission complaints were lodged against KPMG, on this one item alone during testing? None? What other CLEC in Florida has been this fortunate?

15. By not taking the TPT testing all the way to conclusion, including irate customers for whom service should not have been lost due to the "perfect" LSR submitted by KPMG, the process of TPT was quite artificial. The business of an CLEC is not proper order syntax, but satisfied customers. As such the accumulated knowledge of TPT lacks fundamental data regarding customer service and customer satisfaction.

Notwithstanding, the FPSC relegated the CLECs’ “access” experience to the TPT workshops where these real-world experiences were construed as “comments” as

opposed to sworn testimonies¹². At the October 2, 2001, Commission Agenda Conference, it was unclear how the FPSC intends to use these comments, and whether they will be given any weight in determining whether BellSouth receives Section 271 approval in Florida. Further, it was also unclear whether these comments will become part of the record that the FPSC will forward to the FCC should the FPSC grant BellSouth Section 271 approval.

16. It is common knowledge that BellSouth claims that its OSS is a region-wide network.

It is not. The LENS interface is **not** the same in all nine states according to recent BellSouth documents. However the back office processing problems endemic in one state will be replicated from one state to another due to the legacy systems employed.

17. Indeed, it is based on this fact that BellSouth had asked the FPSC to use the Georgia Public Service Commission's ("GPSC") testing result in its evaluation.¹³

Although the FPSC declined BellSouth's offer, the FPSC concluded that

[T]hird-party testing of BellSouth's OSS systems under the plan our staff has recommended may actually provide better, more accurate information about the status of BellSouth's systems than might be obtained through further administrative proceedings on this issue. (Order No. PSC-99-1568-PAA-TP, 9) (Emphasis added).

The FPSC went on to articulate its purported use of the TPT result as follows:

¹² "While this testimony is stricken from the hearing track, parties will not be precluded from resubmitting this testimony as comments in the OSS testing phase of this proceeding." (Order at 7) Order No. PSC-01-1830-PCO-TL, Docket No. 960786-TL, issued on September 11, 2001. (Emphasis added).

¹³ "... , because BellSouth's wholesale customers in Florida use the very same OSS as BellSouth's wholesale customers in Georgia, the results of the testing will be equally applicable in Florida." (Order at 5) (Emphasis added) Order No. PSC-99-1568-PAA-TP, Docket No. 960786-TL, issued on August 9, 1999.

[T]hus, if BellSouth's OSS systems pass the third-party testing in Florida, then BellSouth shall be considered to have remedied the OSS concerns that we identified in Order No. PSC-97-1459-FOF-TL for purposes of our recommendation to the FCC on any future application by BellSouth for interLATA authority in Florida. Likewise, if only portions of BellSouth's OSS systems pass the third-party testing in Florida, then BellSouth shall not be required to make any further demonstration to us with regard to those portions. (Order No. PSC-99-1568-PAA-TP, 9-10)

18. In both its evaluations, the U.S. Department of Justice ("DOJ") alluded to the significance of the competitors' "commercial experience" in evaluating BellSouth's application for Section 271. The DOJ stated as follows:

The Department and the FCC place great weight on performance data in evaluating the actual commercial experience of BellSouth's competitors. (*DoJ November 6, 2001, Evaluation, at 31*) (Emphasis added)

The DOJ further stated that

... , until the Georgia metrics audit is complete or until there is additional commercial experience with the reported metrics, the [Federal Communications] Commission should not rely solely on BellSouth's performance reports in reviewing otherwise credible complaints that BellSouth is not meeting the requirements of the Act. (*DoJ March 21, 2002, Evaluation, at 31*) (Emphasis added)

However at the front end, LENS, TAG, EDI are all configuration driven programs. As such, Supra has previously proven in commercial arbitration that while **some** CLECs in Florida had certain OSS capabilities in LENS, Supra's ability to have the same capabilities had been blocked by the BellSouth Account Team, who refused to make changes to Supra's profile. As such Supra had **no**

ability to order UNE combinations (or the UNE-P subset) before June 18, 2001, long after other CLECs had that ability.

19. Even today the ability to convert BellSouth customers to UNE combinations (or the UNE-P subset) is not very effective. The simple fact is that real world, existing customers have combinations of services that the BellSouth CLEC OSS cannot handle. Placing change orders on existing UNE lines is one thing, but acquiring BellSouth retail customers and converting such to a CLEC UNE customer is much more failure prone. On customers with voicemail, CLASS features, Internet, or DSL, Supra's conversion to UNE orders fall out or are clarified over 65% of the time. Simple orders are processed with fewer problems. Small volumes of orders are processed with fewer problems than higher volumes. The simple fact is that BellSouth's CLEC OSS cannot handle the volume its retail systems can handle.

BellSouth's own OSS performs all order error checking within the OSS interface¹⁴, and the interface submits an essentially perfect service order each and every time directly into SOCS to begin provisioning.

It is important to remember the FCC test that BellSouth relies on to claim that it is in compliance with the Act. BellSouth must provide CLECs with OSS functions in the same time **and manner** in which BellSouth provides the same functions to itself. The TPT may have been designed to test first prong (time), but has completely ignored the second prong (manner). The evidence presented before

¹⁴ ROS or RNS.

the FPSC undisputedly showed that CLEC Local Service Requests jump through more hoops than do BellSouth Service Orders. The effects of such are far-reaching.

The FCC envisioned that some changes might be necessary to implement these goals:

524. We recognize that, although technically feasible, providing nondiscriminatory access to operations support systems functions **may require some modifications to existing systems necessary to accommodate such access by competing providers...**" (CC Order 96-325, para 524, Emphasis added)

What has happened in BellSouth territory¹⁵ is that wholesale replacement of existing OSS interfaces has occurred. Additionally entire **groups** of new OSS systems have been created, with fundamentally complex processing which further separates the relationship between a BellSouth retail order, and an CLEC wholesale order in regards to "same time and manner".

Three additional systems parse and reject ("clarify") CLEC orders. Orders submitted from LENS are **not** error checked with any efficiency or completeness.¹⁶ Yet even when the CLEC **assures** that the order for the identical

¹⁵ On the contrary, in Texas, and other Southwestern Bell (SWBT) states, the ILEC retail ordering systems BEASE (business) and CEASE (residential) were modified to handle a different company code and offered essentially unmodified to CLECs by order of the TPUC. This fact was cited to by the FCC in 96-325 at ¶ 506: ¹⁵ "...SBC contends that its provisioning processes are neutral with respect to competing providers of service and that provisioning for competitors does not take longer than provisioning for its own customers"

¹⁶ See the finding of this Commission in Docket 980119-TP. The situation is unchanged today. BellSouth has not implemented on-line edit checking in LENS to this day despite clear Commission orders to do so.

services the CLEC's new customer is currently enjoying are properly and syntactically formatted, the CLEC may yet "fall out".

The completed LENS LSR is then submitted to a gauntlet of BellSouth's OSS, including TAG, LEO, and LESOG. In any system the order may be declared syntactically incorrect, it may be more complex than the OSS can handle and fall out for manual handling by BellSouth at any of the three stages, or a properly submitted LSR may cause a BellSouth system error which will auto-clarify an otherwise perfectly good LSR.

20. If and when the order passes the gauntlet, it is submitted to the same SOCS that the BellSouth interface directly, and electronically submits orders into.
21. In the June 5, 2001, Award, an Arbitral Tribunal made these outstanding findings with respect to BellSouth's CLEC OSS provided to. In this Award, the Arbitral Tribunal found that, with regard to the capabilities of BellSouth's own OSS,

“[T]he evidence is clear beyond cavil that neither LENS, nor any of the other electronic interfaces offered by BellSouth has such ability¹⁷,” and concluded that “[O]nly BellSouth's OSS has the capabilities set out above.” (*Award of the Tribunal In Consolidated Arbitrations*, issued on June 5, 2001 by the Arbitral Tribunal, at 25 (**Supra Exhibit 2**)) (Emphasis added)

Further, in FPSC Docket No. 001305-TP, BellSouth admitted that the OSS it provides to Supra does not provide non-discriminatory access. (Hearing Transcript, September 24, 2001, at 1188)

22. Regarding the TPT, the DOJ observed that the

¹⁷ The parties' Interconnection Agreement provides that, "BellSouth shall provide the ability to enter a service order via Electronic Interface as described in Subsection 5.1 of this Section."

“Florida test is broader in scope and promises to provide a more robust assessment of BellSouth’s OSS than did the Georgia OSS test.” (*DoJ November 6, 2001, Evaluation, at 6*) (Emphasis added) This observation appears to contemplate the notion that BellSouth’s Florida 271 application will include “actual commercial experiences” of BellSouth’s competitors. Thus, it is imperative that the Florida TPT leaves “*no stone unturned*” in its effort to make the right decision in this matter. Supra observes that the mere fact that the Florida TPT is “more robust,” is not a promise that this will “. . . , demonstrate that BellSouth’s OSS is nondiscriminatory,”

In its evaluation, the DOJ noted that CLECs’ access to “fully functional OSS is essential” to their ability to provide services to all types of customers. (*DOJ November 6, 2001, Evaluation, at 13*) The DOJ further observed that CLECs are negatively impacted by all of the problems and difficulties that they experience in accessing BellSouth's CLEC OSS and concluded that:

. . .the combined effects of contending with these problems – many of which most affect CLECs relying on the UNE-platform and DSL-capable loops – may raise costs for CLECs operating in Georgia and Louisiana, degrade the quality of service CLECs offer to their customers, erode CLEC reputations and customer relationships, and constrain CLECs from aggressively marketing their services. (*DoJ November 6, 2001, Evaluation, at 14*) (Emphasis added)

The DOJ’s observations are not limited to only the states of Georgia and Louisiana; rather these problems are region-wide as evidenced by BellSouth’s claims and the attached arbitration Awards Supra has obtained. Thus, until such time as BellSouth conclusively proves that it has and continues to provide CLECs with nondiscriminatory access to network elements, databases and interconnection in accordance with the provisions of Section 271, the FPSC should carefully examine all CLECs complaints and problems with respect to BellSouth's CLEC OSS.

The DOJ further notes that when CLECs' orders that are manually processed¹⁸ they:

. . . , are more likely to be provisioned incorrectly, . . . and observes that manual processing . . . prevents CLECs from relying on their own automated systems and slows CLECs' response to customer inquiries. (*DoJ November 6, 2001, Evaluation, at 13*)

This evaluation concluded that it is such manual submission of orders that denied Covad *real-time access* to the electronic functions necessary for Covad to maintain good customer relations. (*DOJ November 6, 2001, Evaluation, at 16*)

The DOJ then observed that the:

[F]CC anticipated such problems when it established that, to achieve checklist compliance, an RBOC must demonstrate development of sufficient electronic and manual interfaces to allow competing carriers to access all necessary . . . OSS functions and, in particular, equivalent electronic access to functions that the RBOC itself accesses electronically. (*DoJ November 6, 2001, Evaluation, at 16*)

However BellSouth's own witnesses, before this commission last fall in Docket 001305-TP, paint a much different picture regarding the parity of BellSouth's OSS system(s). First, Mr. Ronald Pate, BellSouth's CLEC OSS witness testified to BellSouth's understanding of the FCC's requirements for automation and integration of OSS components:

21 BY MR. TURNER:

22 Q Mr. Pate, what is your understanding of the FCC's
23 definition of nondiscriminatory with respect to OSS?

24 A Their definition is that, as I just stated in my
25 summary, with respect to services where you have a retail

1 analog, you have to provide that **in substantially the same time**

¹⁸ "To manually process an order, BellSouth's service representatives re-type some or all of the information on the CLEC order form into an internal electronic service order. This manual processing increases the expense of CLEC ordering, lengthens the time required to place customers in services, and creates errors that cause service requests to be improperly rejected or to be provisioned incorrectly (*DOJ November 6, 2001, Evaluation, at 14*)

2 **and manner.** Where there is no retail analog, and that's just
3 really specific to unbundled network elements, it has to be
4 provided such that it allows an efficient competitor a
5 meaningful opportunity to compete.

6 Q Thank you. Mr. Pate, what is your definition of a
7 human-to-machine interface?

8 A The human-machine interface primarily deals with two
9 things. One, it deals with where the application itself is
10 developed by BellSouth. That's used in with respect as we
talk

11 to the ALEC community. As a result of that application being
12 developed by us, we also maintain it, and you do not have the
13 code or ability to modify it. So any enhancements, we have
14 total control over that. That will prevent you typically from
15 being able to use that, manipulate the data, pull that data
16 into your systems.

17 Another component associated that goes closely with
18 this that's been important to the FCC in its rulings is the
19 ability to integrate information from a preordering standpoint
20 to ordering so that there's not the need of dual entry rekeying
21 **of information.** So those two components -- and that results
22 then, of course, since you don't have the ability to pull your
23 information in or integrate it, human intervention associated
24 with it.

See 9-27-2001 Hearing Transcript Ronald Pate Docket
001305-TP pg 1186 ln 21- pg 1187 ln 24. (Emphasis Added.)

Mr. Pate further testified as to BellSouth's understanding of the FCC's
requirements, per the checklist, for a finding of non-discriminatory access to OSS
needed to obtain 271 approval from the FCC:

12 Q Would you consider a human-to-machine interface to be
13 nondiscriminatory according to the FCC's definition?

14 A I'm sorry, could you please ask me that one more
15 time.

16 Q **Sure. Would you consider a human-to-machine**
17 **interface to be nondiscriminatory pursuant to the FCC?**

18 A **No, I don't believe it is based on the FCC's**

19 **requirements in itself.** They have made it clear that they want
20 the ability for the integration that I just spoke to. But they
21 have also made it clear that providing that interface standing
22 alone may not get you approval, but it's still capable to have
23 those interfaces, because a lot of people, by "people," I mean
24 by that ALECs, do not want to invest in funds developing their
25 own, which is going to be required to have a
1 machine-to-machine. They've got to invest.

2 Q Is LENS considered a human-to-machine interface?

3 A Yes.

9-27-2001 Hearing Transcript Ronald Pate Docket 001305-TP pg 1188 ln
12- pg 1189 ln 3. (Emphasis Added.)

Mr. Pate then went on to state:

3 Q I guess my question to you, Mr. Pate, I'm
confused,
4 is that consistent with the answers you have just
provided me
5 regarding LENS not being nondiscriminatory access?

6 A What I've said is that I put those all in a group
to
7 show that BellSouth meets under the FCC the
nondiscriminatory
8 access issue. **I have never said that LENS as a
standalone
interface by itself would pass the scrutiny of those tests.**
9-27-2001 Hearing Transcript Ronald Pate Docket 001305-TP
pg 1195 ln 3-8. (Emphasis Added.)

It should be quite clear that despite BellSouth's mantra that it offers non-discriminatory access as to both time and manner, that BellSouth's own OSS witness before this Commission has **already admitted** that LENS provides discriminatory access to OSS **under the FCC 271 rules**, due to its failure to integrate, and as such LENS fails the test of "substantially same time and manner" set as the other condition by witness Pate.

This is clearly the problem anticipated by the DOJ above.

23. Further the KPMG testing omitted testing of circuits and facilities traditionally recognized as the ILECs most profitable. Included in this list not tested are Switched DS1 service (T1 voice service), ISDN BRI (Basic Rate Interface), and ISDN PRI (Primary Rate Interface). It appears that the test plan was limited to those who wish to compete for POTS service, only.
24. BellSouth believes that the successful completion (FOC) of a CLEC conversion order does not constitute CPNI. As such BellSouth believes that it is not violating CPNI law by using the fact that a Supra LSR received a Firm Order Confirmation (was FOC'ed) to trigger its marketing department of activity on a particular Telephone number. BellSouth has created OSS Systems that "watch" CLEC completed orders, sending the customer information that "BellSouth retains on all of its previous customers" to Marketing where decisions are made as to whether this particular customer is going to be subjected to a winback promotion, or other BellSouth contact. Supra believes that these CPNI violations that occur every night in batches via this BellSouth process.
25. Supra is aware of this because of mailings that were sent to a Supra's employee's home on two occasions this year by BellSouth. The first time was when my Supra line of over 4 years was converted from resale to UNE combinations. The second time, my home number was placed in a list of lines scheduled to be disconnected for non-payment. When the line was re-connected as if payment had been made, a second notice from BellSouth was sent.

This mailing says nothing about CLEC service. Instead it advertises "Here's important information about your new telephone service!" and it gives an "Order

Number (BST)". This is **not** the Supra Purchase Order Number (PON) on this order. Additionally the customer is supplied with the BellSouth PIN number for this account, which would enable the customer to easily convert back to BellSouth, and change line features at the same time. Supra has tried for years to get access to this PIN number, changed on every PON on this line for years. BellSouth refuses to give Supra access to this code, but is now supplying it to Supra's customers as a result of a Supra order for a Supra customer. BellSouth's motives are patently obvious.

How many KPMG "customers" received this notice or another winback approach from BellSouth? An answer of zero begs the obvious question, why not KPMG if every other CLEC is subjected to this and the KPMG test was a real world test.

26. Although BellSouth's service representatives have difficulties reproducing CLECs' submitted orders accurately for manual processing, BellSouth agrees that its service order accuracy rates are low. However, BellSouth contends that the errors responsible for these low accuracy rates should be discounted because "other performance measures suggest that these errors are not affecting customers", meaning CLECs customers. (*DOJ November 6, 2001, Evaluation, at 17, 18*) The DOJ concluded that because of manual processing and the effects inherent, "CLECs cannot provision service to their customers as quickly and accurately as BellSouth." (*DOJ November 6, 2001, Evaluation, at 21*)

Finally, the DOJ asserted that proper analysis of BellSouth's performance is critical in determining whether local markets should be opened for competition, and in ensuring that once opened that they will remain opened. Thus, the DOJ

concluded that reliable operational performance measures are necessary. The DOJ further found that performance measures are deemed reliable “if the measures are meaningful, accurate and reproducible¹⁹.” This evaluation states that “[T]he Department and the FCC place great weight on performance data in evaluating the actual commercial experience²⁰ of BellSouth’s competitors.” (*DOJ November 6, 2001, Evaluation, at 31*) (Emphasis added) Finally, the DOJ concluded that

the establishment of reliable performance benchmarks before the FCC approves an application increases the probability that the regulators will be able to ensure that the RBOC continues to provide services at levels such that CLECs will have a meaningful opportunity to compete (*DOJ November 6, 2001, Evaluation, at 31*) (Emphasis added)

27. Furthermore, on July 22, 2002, the FPSC issued Order No. PSC-02-0989-PAA-TP, Docket No. 000121A-TP, In re: Investigation into the establishment of

¹⁹ The DOJ explains reliable performance measures as: Meaningful metrics require clear definitions that will allow measurement of activities or processes in a way that has real-world, practical significance. Accurate metrics are faithful to established definitions in that they are correctly calculated from the proper subset of raw data using processes that ensure the data are accurately handled and transferred. Reproducible metrics can be reproduced at future dates for verification purposes because the raw data have been archived for an appropriate period in a secure, auditable form and because changes to the systems and processes used for gathering and reporting metrics are carefully controlled and fully documented. (*DOJ November 6, 2001, Evaluation, at 31, Footnote No. 106*)

²⁰ In ruling on the CLECs’ Motion for Reconsideration of the Prehearing Officer’s Order, filed on May 2, 2001, the Order states that the CLECs argued “that it is necessary for us [*FPSC*] to consider [*ALECs’ actual*] commercial experience in this proceeding, because such experience will differ from ALEC to ALEC. They emphasize that the FCC has indicated that actual commercial data provides the best evidence of the status of OSS. (Order at 5) Order No. PSC-01-1252-FOF-TL, Docket No. 960786-TL, issued on June 5, 2001. It is note-worthy, that this is the same commercial experience that the FPSC struck from the administrative hearing track in Docket No. 960786A-TP. In its decision, the FPSC stated, “[W]e agree that the FCC has indicated this information [*CLECs’ actual commercial experience*] is important; however, these arguments do not identify any error in the Prehearing Officer’s decision. Furthermore, they [*the CLECs*] fail to consider that this type of information will be considered by us in this docket. It will simply be addressed in another venue besides the administrative hearing -- that venue being the third-party test. (Order at 12) By addressing “this type of information” in the TPT, FPSC made it clear that this information will be treated as comments and not sworn testimonies. (Order at 7) Order No. PSC-01-1830-PCO-TL, Docket No. 960786-TL, issued on September 11, 2001.

operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (BELLSOUTH TRACK) in which the Commission orders BellSouth to

. . . , file a specific action plan by July 30, 2002, that would reduce BellSouth-caused fall-out and result in compliance with benchmarks. In addition, BellSouth shall adjust its Self-Effectuating Enforcement Mechanism (SEEM) to establish a greater monetary incentive to meet the minimum flow-through benchmark for this metric. (Order at 5)

In reaching this decision, the Commission observed that CLECs' ability to serve their customers, in a timely manner, is critical to their ability to submit orders that will flow-through without human intervention. (Order at 3) The FPSC noted that between December 2001 and March 2002, BellSouth has consistently failed the OSS test for UNE flow-through. (Order at 4) Therefore, the Commission concluded that:

UNE flow-through is especially important to ALECs in Florida because UNEs are a step in the direction of facilities-based competition. As such, a more proactive approach will be taken to motivate BellSouth to perform at or above the benchmark for all elements of flow-through. (Order at 5)

Supra contends that the most proactive approach for the Commission is to withhold from granting BellSouth 271 approval until BellSouth's CLEC OSS actually functions as BellSouth claims. Anything short of this finding will not be

enough motivation for BellSouth to bring its OSS to that level of “meaningful opportunity to compete.”

28. In their consideration of BellSouth/Supra commercial arbitration, the Arbitral Tribunal (Tribunal) noted that the OSS interface that Supra uses to submit customer orders is LENS, an “electronic interface supplied by BellSouth.” Further, the Tribunal observed that “[L]ENS cannot submit local service orders in real time.” Instead, a customer order is:

. . . , processed through several interfaces (including manual introduction) before the local service request can be processed as an order and provisioned. . . . LENS does not provide Supra with the capability to perform pre-ordering, ordering, provisioning, maintenance and repair and billing functions in real time **or in a manner consonant with BellSouth's performance of the process**. (*Award of the Tribunal In Consolidated Arbitrations*, issued on June 5, 2001 by the Arbitral Tribunal, at 22 (**Supra Exhibit 2**)) (Emphasis added)

This Tribunal observation is corroborated by BellSouth witness Pate when he admitted “Supra could not place orders in the same manner as BellSouth.” (June 5, 2001, Award at 22) Moreover, the parties’ interconnection agreement provides that

[E]ach Network Element . . . provided by BellSouth to [Supra] shall be made available to Supra on a priority basis . . . that is equal to or better than the priorities that BellSouth provides to itself The Interconnection Agreement provides that ‘BellSouth shall provide **real- time** electronic interfaces for transferring and receiving service orders and provisioning data’ (*Award of the Tribunal In Consolidated Arbitrations*, issued on June 5, 2001 by the Arbitral Tribunal, at 24 (**Supra Exhibit 2**)) (Emphasis added)

Further, the Tribunal found that the

time required and the number of possible interventions in this process are profoundly different from the BellSouth ordering process, where all information is entered into one system by the representative taking the call, where due date and telephone number can be provided on line, and where service can be provisioned the **same day**. It is literally impossible for Supra to provision service the same day an order is received, due to the unreliable systems made available to Supra by BellSouth. (*Award of the Tribunal In Consolidated Arbitrations*, issued on June 5, 2001 by the Arbitral Tribunal, at 24 (**Supra Exhibit 2**)) (Emphasis added)

Therefore, the Tribunal concluded that

“[T]he evidence is overwhelming that LENS does not provide all these capabilities²¹ in real time”, and ordered that “BellSouth is obligated to provide Supra nondiscriminatory direct access to BellSouth’s OSS and orders that such access be provided by BellSouth to Supra no later than June 15, 2001(*Award of the Tribunal In Consolidated Arbitrations*, issued on June 5, 2001 by the Arbitral Tribunal, at 25 **Supra Exhibit 2**)) (Emphasis added)

29. BellSouth sought reconsideration of the Tribunal’s order, and on July 20, 2001 the Arbitral Tribunal issued their unanimous order on reconsideration (**Supra Exhibit 3**). The Tribunal was unpersuaded by BellSouth's further arguments and found contractual and legal basis to find that **none** of BellSouth's offered CLEC OSS, LENS, TAG, EDI, or it own older OSS DOE and SONGS provided Supra non-discriminatory access to OSS under the Act. Only BellSouth's **own** OSS as used

²¹ The Interconnection Agreement further provides that “BellSouth shall provide the ability to enter a service order via Electronic Interface as described in Subsection 5.1 of this Section. The service order shall provide [Supra] the ability to: (i) establish service and order desired features; (ii) establish the appropriate

by its retail call centers met that requirement based upon the evidence presented

by both parties:

BellSouth argued that in requiring **direct** access to BellSouth's OSS, the Award violates contractual provisions in the Interconnection Agreement concerning electronic interfaces, principally in Attachment 15, and the regulatory guidelines set forth by the FCC in its Third Report and Order and Fourth Further Notice of Proposal Rulemaking, FCC 99-238, released November 5, 1999 ("Third Report and Order"). BellSouth concedes that nondiscriminatory access to the BellSouth OSS is a necessary prerequisite to Supra's and other Competitive Local Exchange Carriers' ("ALEC") ability to pre-order, order, provision, and repair telecommunication elements in a competitive marketplace. BellSouth challenges the need, however, for **direct** access and argues that the spirit of the Award and the Interconnection Agreement can be achieved by the Award being modified to require either (1) Supra's use of BellSouth's existing Direct Order Entry ("DOE") system, or (2) a new, so-called "permanent" or unique interface to BellSouth's OSS be created jointly by Supra and BellSouth. The Tribunal disagrees with BellSouth. (Emphasis in the Original).

BellSouth's attempt to create a false dichotomy – Supra must choose either DOE or a new interface to be developed – conflicts with the fundamental basis of the OSS ruling in the Award. None of the proffered interfaces are at parity with BellSouth's own systems. The interface used now by Supra, the Local Exchange Navigation System ("LENS"), provides nothing close to the direct access to OSS used daily by BellSouth's own customer service representatives. BellSouth's DOE is even worse than LENS because DOE is an antiquated DOS-based system that has none of the user-friendly Windows-based features enjoyed by BellSouth's employees. Moreover, BellSouth argued at the July 16 hearing, but submitted no evidence, that another ILEC's interface with only a four second delay was found to provide parity service. There is no evidence that BellSouth's LENS, DOE, or other interfaces offer anywhere near comparable performance to that which BellSouth described. (Emphasis added.)

directory listing; and (iii) order intraLATA toll and interLATA toll when applicable in a single, unified order." (June 5, 2001, Award at 24)

Faced with the overwhelming deficiencies in DOE and its other interfaces offered to Supra and other ALEC's, BellSouth argues the second part of its false dichotomy – that Supra must jointly develop a new interface with BellSouth. The record shows that both AT&T and Supra attempted to create their own interfaces to BellSouth's OSS and abandoned their projects. Even Attachment 15 to the Interconnection Agreement, while providing detailed provisions concerning interfaces, expressly provided that “[t]his Attachment 15 reflects compromises on the part of both [Supra] and BellSouth. By accepting this Attachment 15, [Supra] does not waive its right to non-discriminatory access to Operations Support Systems of BellSouth.” Interconnection Agreement, Attachment 15, § 10.1. In addition, the same Attachment 15 on which BellSouth so heavily relies indicates in its “Purpose” section that:

For all Local Services, Network Elements and Combinations ordered under this Agreement, BellSouth will provide [Supra] and its customers ordering and provisioning, maintenance, and repair and pre-ordering services within the same level and quality of service available to BellSouth, its Affiliates, and its customers.

Id., at Attachment 15 § 1.2 (emphasis added). Finally, the FCC's Third Report and Order found that “lack of access to [BellSouth's and other ILEC's] OSS impairs the ability of requesting carriers to provide the services they seek to offer.” Third Report and Order § 433, at 192.

For all of these reasons, the only relief that will provide Supra with OSS access at parity with the access enjoyed by BellSouth, which is what is called for in the Interconnection Agreement, is nondiscriminatory **direct** access by Supra. Such access must be provided while accommodating BellSouth's legitimate concerns regarding network security and customer privacy. Supra assured the Tribunal at the July 16 hearing that it would abide by reasonable security and privacy measures. The Award directs BellSouth to provide such access forthwith. (*Order of the Tribunal Reconsideration*, issued on July 20,, 2001 by the Arbitral Tribunal, at pg 2-4 (**Supra Exhibit 3**)) (Underline Emphasis Added, Bold emphasis in Original.)

30. In spite of the several rulings whereby the Arbitral Tribunal has ordered BellSouth to provide Supra with services pursuant to the parties' interconnection

agreement, BellSouth has consistently refused to comply with these arbitral awards and rulings. Even more perplexing is this Commission's complete disregard for the findings of fact made by three independent, experienced arbitrators.

31. To make matters worse, BellSouth continues to engage in an anti-competitive manner by denying CLECs access to BellSouth's billing OSS. No CLEC in Florida has been granted unbundled access to CABS or CRIS, the two billing OSS used by BellSouth, or even the data contained within. **Specifically, BellSouth continues to deny Supra information which would allow Supra to reconcile BellSouth's bills, while, at the same time, refusing to provide Supra with complete Call Detail Records which would allow Supra to bill for things such as reciprocal compensation, wireless calls originated and terminated by Supra customers, and various access charges to IXC's.** BellSouth has furnished bills in such a manner that there is insufficient detail to allow Supra to audit and/or verify accuracy of the bills.
32. In CC Docket No. 02-35, FCC 02-147, Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana (FCC 02-147), the FCC stated that

[B]ellSouth must provide competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that BellSouth provides such information to itself, (FCC 02-147, ¶173) (Emphasis added)

Supra agrees with the FCC's conclusion that *complete and accurate* bills are very vital in the CLEC's ability to audit the bills and in-turn bill its end-user customers. This is a critical step that is vital for the CLECs to stay liquid. The FCC recognizes that *complete and accurate* bills are critical and necessary to the CLECs general operability – hence the finding that wholesale bills should be provisioned “. . . in a manner that gives competing carriers a meaningful opportunity to compete.” (FCC 02-147, ¶173) Although the FCC determined that BellSouth provides nondiscriminatory access to its billing functions, Supra notes that the mere presence of “non-discrimination” does not indicate CLECs are provided a *meaningful opportunity* to compete in the BellSouth's service region and with BellSouth. (FCC 02-147, ¶173).

33. Although several parties filed comments with the FCC describing problems with BellSouth's billing systems, the FCC ignored these problems in favor of granting BellSouth Section 271 approval by determining that BellSouth “. . ., provides nondiscriminatory access to its billing functions.” Notwithstanding, BellSouth acknowledged that “when including orders into its billing system, a small percentage of orders include errors that require updating and are placed into a ‘hold file.’” (FCC 02-147, ¶175) In making its determinations, the FCC failed to properly take into consideration CLECs' actual commercial experience, but instead relied on Third Party Testing findings. (FCC 02-147, ¶174). Testimony from Supra, if allowed, would have shown conclusively that orders that go into the hold file often remain there, with the customer in limbo, for over six months.

BellSouth has less than three people clearing hold file errors in its nine-state region.

Supra believes that the Florida TPT was the right avenue for the FPSC to address BellSouth's CLEC OSS (i.e., the “network element”). However, Supra equally believes that CLECs’ actual commercial experience that results from their daily interface with BellSouth's CLEC OSS (i.e., the operational performance of the “network”) was a critical and an integral part of the checklist items that were evaluated in the administrative hearing track of this proceeding. The FPSC denied all Florida CLEC's the opportunity to present evidence, and cross-examine BellSouth on the evidence in this crucial proceeding. Thereby, the skewing the outcome of the Florida TPT in favor of BellSouth. This action by the FPSC gravely compromise and endangered the status of competition in Florida, and in the BellSouth nine-state region at-large. This action otherwise, changed the basis for defining the OSS network element for purposes of 271 approval for entry into IntraLATA in-region services. This change is significant, in that how BellSouth’s CLEC OSS was defined by BellSouth as opposed to what the Act calls for.

32. Supra asks that the FCC look past the impractical and flawed findings of the KMPG tests, as well as the more recent findings of the DOJ, wherein a finding that BellSouth did provide non-discriminatory access to OSS was made. In light of all of the readily available evidence available to all of these bodies, Supra is perplexed as to how any reasonable person could conclude that the ordering

processes made available to CLECs are in the same manner as those used by BellSouth.

33. Supra requests that the FCC deny BellSouth's application until such time as BellSouth ceases its anti-competitive conduct and fully complies with all of its obligations under the Telecom Act.

Respectfully submitted,

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Exhibits

- Supra Exhibit #1** Preliminary Injunctive Order, Case No 4:02 CV 319-RH, United States District Court, Northern District of Florida
- Supra Exhibit #2** June 5, 2001 Award of the CPR Arbitral Tribunal in Commercial Arbitration between Supra and BellSouth regarding, among other things, the issue of Supra's OSS capability vs. the requirements of the Interconnection Agreement.
- Supra Exhibit #3** July 20, 2001 Order of the CPR Arbitral Tribunal on reconsideration.